

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVE BADUE,)
Petitioner,) No C 07-3615 VRW (PR)
vs.) ORDER OF DISMISSAL
CALIFORNIA ATTORNEY)
GENERAL, et al,)
Respondent(s).)

Petitioner has filed a pro se petition for a writ of habeas corpus under 28 USC § 2254 challenging a judgment of conviction for drug-related offenses from the Superior Court of the State of California in and for the County of Santa Clara. Petitioner alleges that he was sentenced to 16 months in prison (and three years of parole) on January 6, 2000 and is no longer in custody serving this term.

The federal writ of habeas corpus is only available to persons "in custody" under the conviction or sentence under attack at the time the petition is filed. See Maleng v Cook, 490 US 488, 490-91 (1989); Carafas v LaVallee, 391 US 234, 238 (1968). This requirement is jurisdictional. See *id.* Because petitioner was

1 no longer in custody under the conviction under attack at the time he filed the
2 instant petition for a writ of habeas corpus, the petition must be DISMISSED for
3 lack of subject matter jurisdiction. See De Long v Hennessey, 912 F2d 1144,
4 1146 (9th Cir 1990).

5 The clerk shall enter judgment in accordance with this order and close the
6 file.

7 SO ORDERED.
8 
9 VAUGHN R WALKER
United States District Chief Judge